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Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions

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September 6, 2017

Congressional Research Service

7-5700

www.crs.gov

R44764

Summary

On September 5, 2017, Attorney General Jeff Sessions announced that the Deferred Action for Childhood Arrivals (DACA) policy, an Obama Administration initiative, was being rescinded. A related memorandum released by the Department of Homeland Security (DHS) that same day rescinded the 2012 memorandum that established DACA and described how DHS would “execute a wind-down of the program.” According to the September 2017 memorandum, DHS will continue to adjudicate certain DACA requests and will not terminate previously issued grants of deferred action or employment authorization “solely based on the directives in this memorandum.”

DACA was established in June 2012, when DHS announced that certain individuals without a lawful immigration status who were brought to the United States as children and met other criteria would be considered for temporary relief from removal. To request DACA (initial or renewal), an individual has to file specified forms with DHS’s U.S. Citizenship and Immigration Services (USCIS) and pay associated fees. USCIS’s decision on an initial DACA request or a renewal request is discretionary. DACA recipients are not granted a lawful immigration status and are not put on a pathway to a lawful immigration status. They are, however, considered to be lawfully present in the United States during the period of deferred action.

Cumulatively, through March 31, 2017, USCIS approved 787,580 initial DACA requests and 799,077 renewal requests. The overall approval rates for DACA requests accepted and decided by March 31, 2017, were approximately 92% for initial requests and 99% for renewals.

To date, Congress has considered, but never enacted, legislation on the DACA initiative. Several bills introduced in the 115th Congress would provide different forms of immigration protection to unauthorized childhood arrivals who satisfy specified eligibility criteria. Some of these bills would provide temporary protection from removal and employment authorization to eligible individuals, while other measures would establish pathways for eligible individuals to become U.S. lawful permanent residents (LPRs).

This report provides answers to frequently asked questions about the DACA initiative.

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Introduction

On September 5, 2017, Attorney General Jeff Sessions announced that Deferred Action for Childhood Arrivals (DACA), an Obama Administration initiative, was being rescinded. A related memorandum¹ released by the Department of Homeland Security (DHS) that same day rescinded the 2012 memorandum² that established the DACA process. DACA was created to provide temporary relief from removal from the United States for individuals without a lawful immigration status who were brought to the United States as children and met other criteria.³ Under the DACA process, both initial grants of deferred action and renewals are issued for a period of two years.

In addition to rescinding the 2012 DACA memorandum, the September 2017 memorandum states that DHS will “execute a wind-down” of DACA, during which it will “adjudicate certain requests for DACA and associated applications meeting certain parameters.” These requests include initial and renewal requests for DACA accepted by DHS by September 5, 2017, and renewal requests from current DACA beneficiaries whose benefits will expire between September 5, 2017, and March 5, 2018, and whose renewal requests are accepted by DHS by October 5, 2017. The memorandum also states that DHS will not terminate previously issued grants of deferred action or employment authorization “solely based on the directives in this memorandum.”

To provide context for the Trump Administration’s rescission of DACA and possible congressional action, this report addresses frequently asked questions about the DACA initiative.

How was DACA established?

The DACA initiative was announced by former DHS Secretary Janet Napolitano in a June 15, 2012, DHS memorandum entitled, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children.” The DACA initiative was not established by executive order.

¹ U.S. Department of Homeland Security, Memorandum to James W. McCament, Acting Director, U.S. Citizenship and Immigration Services, Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement, Kevin K. McAleenan, Acting Commissioner, U.S. Customs and Border Protection, Joseph B. Maher, Acting General Counsel, Ambassador James D. Nealon, Assistant Secretary, International Engagement, Julie M. Kirchner, Citizenship and Immigration Services Ombudsman, from Elaine C. Duke, Acting Secretary of Homeland Security, Rescission of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” September 5, 2017, <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

² U.S. Department of Homeland Security, Memorandum to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services, John Morton, Director, U.S. Immigration and Customs Enforcement, from Janet Napolitano, Secretary of Homeland Security, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” June 15, 2012, <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

³ DACA is a form of deferred action. U.S. Citizenship and Immigration Services (USCIS) describes deferred action as “a use of prosecutorial discretion to defer removal action against an individual for a certain period of time.” U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Consideration of Deferred Action for Childhood Arrivals, <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

What are the eligibility requirements for consideration of DACA?

The eligibility criteria are

- under age 16 at the time of entry into the United States;
- under age 31 on June 15, 2012;
- continuous residence in the United States for at least five years before June 15, 2012 (that is, since June 15, 2007);
- physical presence in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action;
- not in lawful immigration status on June 15, 2012;
- not convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and not otherwise a threat to national security or public safety; and
- in school, graduated from high school or obtained general education development certificate, or honorably discharged from the U.S. Armed Forces or the Coast Guard.

In addition, an individual must be at least age 15 to request DACA, unless he or she is in removal proceedings or has a final removal order or voluntary departure order.

What forms and other materials must an individual have filed to request consideration of DACA?

An individual must have filed the following three forms with DHS's U.S. Citizenship and Immigration Services (USCIS):

- Form I-821D, Consideration of Deferred Action for Childhood Arrivals
- Form I-765, Application for Employment Authorization
- Form I-765WS, Worksheet

The individual also should have submitted evidence that he or she met the DACA eligibility requirements (see "What are the eligibility requirements for consideration of DACA?").

Was there a fee to request consideration of DACA?

Yes. The fees, which most recently totaled \$495, consisted of a Form I-765 filing fee of \$410 and biometric services fee of \$85.

There were limited fee exemptions available. An individual must have requested and received a fee exemption before submitting a DACA request without a fee.

Are DACA applicants subject to background checks?

Yes. The biographic and biometric information submitted by applicants is checked against databases maintained by DHS and other federal agencies.

Is the information provided by DACA applicants protected?

According to DHS, information provided in a DACA request generally “will not be proactively provided to other law enforcement entities (including ICE and CBP) for the purpose of immigration enforcement proceedings unless the requestor poses a risk to national security or public safety” or meets certain criteria.⁴ At the same time, DHS maintains the following:

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.

If an individual satisfies the eligibility requirements, is DACA automatically granted?

No. USCIS’s decision on a DACA request is discretionary.

Can an individual who has never requested consideration of DACA still do so, or has the period for filing initial DACA requests closed?

The period has closed. USCIS stopped accepting initial DACA requests as of September 5, 2017. However, the agency will reportedly adjudicate initial requests for DACA accepted by that date.

Are DACA recipients legally allowed to work?

Individuals granted deferred action may receive work authorization if they can demonstrate an economic necessity for employment.

⁴ U.S. Department of Homeland Security, Frequently Asked Questions: Rescission Of Deferred Action For Childhood Arrivals (DACA), September 5, 2017, answer to Q8, <https://www.dhs.gov/news/2017/09/05/frequently-asked-questions-rescission-deferred-action-childhood-arrivals-daca> (hereinafter cited as DHS, 2017 DACA FAQs). ICE is DHS’s Immigration and Customs Enforcement; CBP is DHS’s Customs and Border Protection.

Are DACA recipients allowed to travel outside the United States?

Previously, an individual granted deferred action under DACA who wanted to travel outside the United States could apply to USCIS for advance parole. Advance parole is permission for a foreign national to re-enter the United States after temporarily traveling abroad.⁵ USCIS, however, is no longer approving advance parole requests associated with DACA. At the same time, the September 2017 DHS memorandum stated that DHS “will generally honor the validity period for previously approved applications for advance parole.”

Are DACA recipients eligible for federal public benefits?

DACA recipients, like other foreign nationals without lawful immigration status, are barred from receiving federal public benefits with the exception of certain forms of short-term, emergency assistance.⁶

Are DACA recipients granted lawful immigration status?

No. DACA recipients are not granted a lawful immigration status and are not put on a pathway to a lawful immigration status. During the period of deferred action, however, the DACA recipient is in a period of stay authorized by DHS.

Can an individual’s deferred action under DACA be terminated before the end of the two-year DACA grant period?

Presumably, yes. According to DHS, the agency “will continue to exercise its discretionary authority to terminate or deny deferred action at any time when immigration officials determine termination or denial of deferred action is appropriate.”⁷

What requirements must a DACA recipient meet in order to be considered for renewal of DACA?

The DACA recipient must satisfy the following criteria:

⁵ Advance parole, however, does not guarantee re-entry into the United States; foreign nationals are subject to inspection at U.S. ports of entry and may be denied entry.

⁶ See CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*.

⁷ DHS, 2017 DACA FAQs, answer to Q9.

- the individual did not depart from the United States on or after August 15, 2012, without first obtaining advance parole (see “Are DACA recipients allowed to travel outside the United States?”);
- the individual has continuously resided in the United States since submitting his or her latest approved DACA request; and
- the individual has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and is not a threat to national security or public safety.

According to DHS, it will accept renewal requests from eligible DACA recipients until October 5, 2017 (see “Introduction”).

What forms and other materials does an applicant for DACA renewal have to file?

To request a renewal of deferred action under DACA, an individual must file the following three forms with DHS/USCIS:

- Form I-821D, Consideration of Deferred Action for Childhood Arrivals
- Form I-765, Application for Employment Authorization
- Form I-765WS, Worksheet

The forms are available on the USCIS website, <http://www.uscis.gov>.

An individual requesting a DACA renewal does not have to submit any documents that he or she previously provided to USCIS in connection with an approved DACA request. However, the individual does have to submit any new documents related to removal proceedings or criminal history. USCIS will request additional documentation from the individual, if needed.

Is there a fee for DACA renewal requests?

There is a total fee of \$495, consisting of a Form I-765 filing fee of \$410 and biometric services fee of \$85.

Is approval of a DACA renewal request automatic?

No. The decision on a request to renew DACA is discretionary, as it is on an initial DACA request.

If a DACA recipient’s request for renewal is approved, is the individual granted legal immigration status?

No. An individual granted deferred action (an initial grant or a renewal) is not given a lawful immigration status and is not put on a pathway to a lawful immigration status (see “Are DACA recipients granted lawful immigration status?”).

Would a person who loses DACA be forced to leave the United States?

An individual who loses DACA would no longer have the protection from removal that DACA provides. Whether or not the U.S. government would take steps to remove that individual from the country is a separate issue.

How many DACA requests have been approved to date?

As of March 31, 2017, a total of 787,580 initial DACA requests and 799,077 renewal requests had been approved.⁸

What are the DACA approval and denial rates?

Of all the initial DACA requests accepted by USCIS for consideration and decided by March 31, 2017, approximately 92% were approved and 8% were denied, terminated, or withdrawn. For renewal requests accepted and decided by March 31, 2017, the approval rate was approximately 99% and the denial/termination/withdrawal rate was 1%.⁹

Has Congress enacted any legislation on DACA?

No legislation on DACA has been enacted. During the 113th Congress, however, the House of Representatives passed a bill (H.R. 5272) to prohibit using federal funds to process DACA applications. That bill read, in part:

No agency or instrumentality of the Federal Government may use Federal funding or resources after July 30, 2014—

(1) to consider or adjudicate any new or previously denied application of any alien requesting consideration of deferred action for childhood arrivals, as authorized by Executive memorandum dated June 15, 2012 and effective on August 15, 2012 (or by any other succeeding Executive memorandum or policy authorizing a similar program)....¹⁰

Have any bills been introduced in the 115th Congress related to DACA?

Several bills have been introduced in the 115th Congress to provide different forms of immigration protection to unauthorized childhood arrivals who satisfy specified eligibility criteria. Some of these bills, including the Bar Removal of Individuals who Dream and Grow our

⁸ USCIS DACA statistics are available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-821d-deferred-action-childhood-arrivals>. Grants of deferred action under DACA are for two years. The same individual may renew multiple times.

⁹ USCIS DACA statistics.

¹⁰ See archived CRS Report R43320, *Immigration Legislation and Issues in the 113th Congress*.

Economy (BRIDGE) Act (S. 128/H.R. 496) and the Securing Active and Fair Enforcement (SAFE) Act (S. 127), would provide temporary protection from removal and employment authorization to eligible individuals. Other measures, including the Encourage New Legalized Immigrants to Start Training (ENLIST) Act (H.R. 60), the Recognizing America's Children Act (H.R. 1468), the American Hope Act of 2017 (H.R. 3591), and the Dream Act of 2017 (S. 1615/H.R. 3440), would establish pathways for eligible individuals to become U.S. lawful permanent residents (LPRs). (These measures bear similarities to Development, Relief, and Education for Alien Minors (DREAM) Act bills introduced in past Congresses.)

Have past Congresses taken action on the DREAM Act?

Legislation known as the Development, Relief, and Education for Alien Minors (DREAM) Act was introduced in past Congresses. This legislation sought to establish a process for eligible unauthorized individuals who entered the United States as children to obtain LPR status. DREAM Act provisions were introduced both as stand-alone bills and as parts of larger immigration reform bills. Although DREAM Act legislation has never been enacted, some measures have seen legislative action. For example, in the 111th Congress, the House approved DREAM Act language as part of an unrelated bill, the Removal Clarification Act of 2010 (H.R. 5281).¹¹ In the 113th Congress, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), which incorporated DREAM Act language in its legalization provisions.¹²

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¹¹ The Senate, however, failed to invoke cloture on a motion to agree to the House-passed DREAM Act amendment, and the bill died at the end of the Congress. See archived CRS Report R40848, *Immigration Legislation and Issues in the 111th Congress*.

¹² S. 744, as passed by the Senate in the 113th Congress, would have established a general legalization program for unauthorized aliens in the United States, with a special “DREAM Act” pathway to LPR status for certain aliens who entered the country as children. The House did not consider S. 744. See archived CRS Report R43320, *Immigration Legislation and Issues in the 113th Congress*.